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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/557,600	11/22/2005	Cordula Mock-Knoblach	281546US0PCT	6081
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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
MRUK, BRIAN P				
ART UNIT		PAPER NUMBER		
1796				
NOTIFICATION DATE		DELIVERY MODE		
03/11/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/557,600

Applicant(s)

MOCK-KNOBLAUCH ET AL.

Examiner

Brian P. Mruk

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date 2/21/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

2. The abstract of the disclosure is objected to because it is more than one page long. Correction is required. See MPEP § 608.01(b).
3. The examiner asserts that the specification does not contain a Brief Description of the Drawing. Appropriate correction and/or clarification is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 18-37 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mattox, U.S. Patent No. 4,954,338.

Mattox, U.S. Patent No. 4,954,338, discloses a microemulsion composition comprising an anionic surfactant (see abstract and col. 3, lines 49-61), and a polyoxyethylene and polyoxypropylene block copolymer that contains greater than 20 moles of ethylene oxide and greater than 20 moles of propylene oxide (see col. 4, lines 11-28), per the requirements of the instant invention. It is further taught by Mattox that the microemulsion is useful as a disinfectant, detergent, and textile cleaner (see col. 5, lines 11-32). Specifically, note Examples 2-4. Therefore, instant claims 18-37 are anticipated by Mattox, U.S. Patent No. 4,954,338.

In the alternative that the above disclosure is insufficient to anticipate the above listed claims, it would have nonetheless been obvious to the skilled artisan to produce the claimed composition, as the reference teaches each of the claimed ingredients within the claimed proportions for the same utility.

7. Claims 18-37 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Pinter et al, U.S. Patent No. 5,045,311.

Pinter et al, U.S. Patent No. 5,045,311, discloses a microemulsion concentrate comprising a nonionic surfactant that is a block copolymer, water, and a co-surfactant (see abstract and col. 3, line 52-col. 4, line 3), per the requirements of the instant invention. Specifically, note Examples 2-8 and 12. Therefore, instant claims 18-37 are anticipated by Pinter et al, U.S. Patent No. 5,045,311.

In the alternative that the above disclosure is insufficient to anticipate the above listed claims, it would have nonetheless been obvious to the skilled artisan to produce the claimed composition, as the reference teaches each of the claimed ingredients within the claimed proportions for the same utility.

8. Claims 18-37 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Candau et al, US 2003/0129151.

Candau et al, US 2003/0129151, discloses a cosmetic composition in the form of an emulsion that contains at least one amphiphilic copolymer (see abstract and page 17, paragraph 300). It is further taught by Candau et al that suitable amphiphilic

copolymers include polyalkoxylated aliphatic alcohols and triblock copolymers of ethylene oxide and propylene oxide, wherein the polyalkoxylated aliphatic alcohols contain up to 20 moles of ethylene oxide and up to 40 moles of propylene oxide, and the triblock copolymers of ethylene oxide and propylene oxide contain up to 300 moles of ethylene oxide and up to 80 moles of propylene oxide (see page 14, paragraph 198-page 15, paragraph 212), per the requirements of the instant invention. Candau et al further discloses that the composition further contains surfactants (see page 16, paragraph 293), and that the composition is in the form of an emulsion for treating hair and skin (see page 17, paragraphs 300-306). Furthermore, the examiner asserts that "The fact remains that one of ordinary skill informed by the teachings of Candau et al would not have had to choose judiciously from a genus of possible combinations to obtain the very subject matter to which appellant's composition per se claims are directed." *In re Sivaramakrishnan*, 213 USPQ 441 (CCPA 1982). Therefore, instant claims 18-37 are anticipated by Candau et al, US 2003/0129151.

In the alternative that the above disclosure is insufficient to anticipate the above listed claims, it would have nonetheless been obvious to the skilled artisan to produce the claimed composition, as the reference teaches each of the claimed ingredients within the claimed proportions for the same utility.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 18-37 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 and 20 of copending Application No. 10/556,793. Although the conflicting claims are not identical, they are not patentably distinct from each other because copending Application No. 10/556,793 claims a similar mixture comprising a surfactant and an amphiphilic polymer that contains a hydrophobic backbone and at least one hydrophilic side chain, wherein the composition is in the form of an emulsion or microemulsion (see claims 1-17 and 20 of copending Application No. 10/556,793), as required in instant claims 18-37. Therefore, instant claims 18-37 are an obvious formulation in view of claims 1-17 and 20 of copending Application No. 10/556,793.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Claims 18-37 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 17-34 of

compending Application No. 10/588,719. Although the conflicting claims are not identical, they are not patentably distinct from each other because compending Application No. 10/588,719 claims a similar mixture comprising a surfactant and an amphiphilic polymer that contains a hydrophobic backbone and at least one hydrophilic side chain, wherein the polymer has a molecular weight of 200-20,000 daltons, and the composition is in the form of an emulsion or microemulsion (see claims 17-34 of compending Application No. 10/588,719), as required in instant claims 18-37. Therefore, instant claims 18-37 are an obvious formulation in view of claims 17-34 of compending Application No. 10/588,719.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Mon-Thurs (7:00 AM-5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian P Mruk/
Primary Examiner, Art Unit 1796

Brian P Mruk
February 28, 2008

Brian P Mruk
Primary Examiner
Art Unit 1796